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15 Machines Corporation

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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15 SAM ABBOUD,

16 Plaintiff,

17 vs.

18 INTERNATIONAL BUSINESS MACHINES  
19 CORPORATION, JOE SMYTH; JOHN DOE  
20 #1; JOHN DOE #2; DOES 1-48,

21 Defendants.

CASE NO. C04-00017 JW

**STIPULATION AND ~~PROPOSED~~  
ORDER MODIFYING SCHEDULING  
ORDER**

1 Because of the facts and changed circumstances set forth below, the parties hereby  
2 stipulate to and request that the Court modify the scheduling order in this case as follows:

3 WHEREAS, by its January 18, 2006 Order, the Court vacated the January 23, 2006  
4 hearing set for International Business Machines Corporation's ("IBM") Motion for Summary  
5 Judgment, or in the alternative, Partial Summary Judgment and deemed IBM's motion appropriate  
6 for submission on the papers;

7 WHEREAS, the Court's ruling on IBM's Motion for Summary Judgment, or in the  
8 alternative, Partial Summary Judgment is still pending;

9 WHEREAS, due to unavoidable scheduling conflicts, two witnesses, both employees of  
10 non-party Hitachi Global Storage Technologies, are not available for deposition until March 10,  
11 2006, and March 24, 2006, respectively; and

12 WHEREAS, due to unavoidable scheduling conflicts, George A. Jouganatos, plaintiff's  
13 expert on the issue of damages, cannot be made available for deposition until March 10, 2006;

14 WHEREAS, also due to unavoidable scheduling conflicts, the depositions of IBM's  
15 rebuttal expert regarding human resources issues, Rhoma Young, and plaintiff's supplemental  
16 expert regarding employability of plaintiff, Mel Jacobsen, will not be able to take place until after  
17 the currently set deadline for submission of the parties Joint Pretrial Statement;

18 WHEREAS, the hearing on IBM's Motions to Exclude the expert witness reports and  
19 proposed testimony of George A. Jouganatos and Amy Oppenheimer, and on plaintiff's Motion to  
20 Strike portions of the expert witness report of Steven Clarke is scheduled for April 3, 2006.

21 IT IS HEREBY STIPULATED THAT certain pre-trial dates set forth in the Court's current  
22 scheduling order be modified as follows:

23 1. The attorneys who will try the case will confer with one another and file and lodge  
24 with chambers on April 17, 2006 a Preliminary Pretrial and Trial Setting Conference Statement  
25 and Proposed Order.

26 2. The attorneys who will try the case will appear on May 1, 2006 at 11:00 a.m. for a  
27 Preliminary Pretrial and Trial Setting Conference.

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1 The parties respectfully request that the Court adopt the above-referenced modifications to  
2 the pre-trial schedule, and modify the Court's Scheduling Orders accordingly.

3 DATED: February 27, 2006

ROBERT DAVID BAKER, INC.

4  
5 By

Robert David Baker  
Attorney for Plaintiff Sam Abboud

6  
7 DATED: February 27, 2006

QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP

8  
9 By

Scott G. Lawson  
Attorneys for Defendant  
International Business Machines Corporation

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11  
12 PURSUANT TO THE STIPULATION OF THE PARTIES, THE SCHEDULING ORDER IS  
13 HEREBY MODIFIED AS SET FORTH IN THE STIPULATION.

14 IT IS SO ORDERED.

15 Dated: 03/07/06

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Honorable James Ware  
United States District Judge